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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,391	07/22/2003	Mark Galloway	11147.5	6825
21999	7590	01/06/2010	EXAMINER	
KIRTON AND MCCONKIE 60 EAST SOUTH TEMPLE, SUITE 1800 SALT LAKE CITY, UT 84111				SIMS, JASON M
ART UNIT		PAPER NUMBER		
1631				
			MAIL DATE	DELIVERY MODE
			01/06/2010	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/624,391	GALLOWAY ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	JASON M. SIMS	1631	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 28 September 2009.

2a) This action is **FINAL**.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 40 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 40 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.
2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

Applicant's arguments, filed 9/28/2009, have been fully considered. The following rejections and/or objections are either reiterated or newly applied. They constitute the complete set presently being applied to the instant application.

Claim 40 is the current claim hereby under examination.

### ***Claim Rejections - 35 USC § 102-Maintained***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claim 40 is rejected under 35 U.S.C. 102(a) as being anticipated by Zhang (with a priority date of 10/22/2002; although the included paper shows a copyright date of 2003, the paper was available via Frontier Perspectives on 10/22/2002 and was retrieved via the internet from [www.thefreelibrary.com](http://www.thefreelibrary.com). The paper included from HBI Deutschland with a copyright of 2003 was included in the file wrapper because it had all the figures available in a PDF format).

The claims are drawn to a computerized meridian linking and balancing system comprising:

a Computer and computer system for:

a) measuring electrical signals at multiple meridian points on the surface of a human body;

- b) comparing and mapping the multiple signals to form meridian network;
- c) measuring other meridian points that are typically stable to establish a stable reference point; and
- d) comparing the stable reference point measurements to measurements from points on the meridian network to determine variances.

Zhang on page 5 teaches at pages 5-7, Figs. 5-7 measuring resistance, i.e. electrical signals, at multiple meridian points and mapping the signals to form a meridian network, which reads on steps a) and b). Zhang further describes on page 7 that along meridians, there can be great changes in special pathological states. Zhang further states that this phenomenon can be objectively measured electronically and that "we can see the big difference in the comparison between normal distribution of the so called "skin resistance" and "the changed distributions of it in some abnormally pathological, physiological, and psychological states," which reads on steps c) and d). Zhang describes making many measurements as in Fig. 9 and describes the meridian in a normal state as relatively stable, see page 9, first paragraph. Thus having measurements on the meridian during a normal state reads on measuring meridian points that are typically stable to establish a stable reference point as in step c). Furthermore, Zhang discusses comparing these to meridian measurements during some state, i.e. pathological or psychological, etc. where there are variances between the two, which reads on step d).

### ***Response to Arguments***

Applicant's arguments filed 9/28/2009 have been fully considered but they are not persuasive.

Applicant argues that the filed Declaration under 37 C.F.R. 1.131 and 1.132 establish a reduction to practice in prototype form as early as May 14<sup>th</sup> 2002, which is prior to the priority date of the cited prior art of 10/22/2002.

Applicant's arguments are not found persuasive because applicant has only presented a statement claiming said reduction to practice without any accompanying evidence. With regards to filing a Declaration under 37 C.F.R. 1.131, the MPEP states:

*“The showing of facts shall be such, in character and weight, as to establish reduction to practice prior to the effective date of the reference, or conception of the invention prior to the effective date of the reference coupled with due diligence from prior to said date to a subsequent reduction to practice or to the filing of the application. Original exhibits of drawings or records, or photocopies thereof, must accompany and form part of the affidavit or declaration or their absence must be satisfactorily explained.”*

Applicant has neither showed any facts in character and weight as to establish said reduction to practice nor satisfactorily explained its absence. Thus the filed declaration is insufficient to establish said priority and overcome the instant rejection.

### ***Conclusion***

No claim is allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Sims, whose telephone number is (571)-272-7540.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Marjorie Moran can be reached via telephone (571)-272-0720.

Papers related to this application may be submitted to Technical Center 1600 by facsimile transmission. Papers should be faxed to Technical Center 1600 via the Central PTO Fax Center. The faxing of such papers must conform with the notices published in the Official Gazette, 1096 OG 30 (November 15, 1988), 1156 OG 61 (November 16, 1993), and 1157 OG 94 (December 28, 1993) (See 37 CFR § 1.6(d)). The Central PTO Fax Center number is (571)-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/ Jason Sims /

/Marjorie Moran/  
Supervisory Patent Examiner, Art Unit 1631